HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No.1336 OF 2006

Between:

D.R. Sridhar Naidu

... Appellant

AND

The Commissioner of Prohibition & Excise
Andhra Pradesh, Hyderabad and 3 others.

... Respondents

: JUDGMENT :

Counsel for the Appellant : Sri Pratap Narayan Sanghi

Counsel for respondent Nos.1,2 & 4 : Government Pleader for Prohibition & Excise

Counsel for respondent No.3 : Sri N. Pramod

12th February-2007

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Per G.S. Singhvi, CJ

This appeal is directed against order dated 26.10.2006 passed by the learned Single Judge in Writ Petition No.17124 of 2006, whereby she dismissed the writ petition filed by the appellant against order dated 10.08.2006 passed by Commissioner of Prohibition and Excise, Andhra Pradesh (respondent No.1) for shifting of the shop of M/s. R.R. Wines from Door No.IX/154, Ward No.15, Kamma Street, Madanapalli to Door No.4-8-2-E1, Ward No.31, Krishna Nagar, Madanapalli.

The Facts:

In response to notification dated 27.5.2006 issued by Collector and District Magistrate, Chittoor, the appellant and respondent No.3 applied for grant of licence for sale of Indian made foreign liquor/foreign liquor under the Andhra Pradesh Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005 (for short 'the Rules'). The appellant gave highest bid of Rs.24,45,000/- in respect of the shop situated in Ward No.31, Madanapalli, Chittoor District. Respondent No.3 gave highest bid in respect of the shop situated in Ward No.15. The competent authority accepted their bids and granted licence to them in the names of M/s.Ranganadha Wines and M/s.R.R.Wines respectively for a period of two years commencing from 1.7.2006.

After obtaining licence, the appellant started his business in

premises bearing Door No.IV-3-2, Room No.1, Ward No. 15, Krishna Nagar, Madanapalli, Chittoor District. Likewise, respondent No.3 started his business in premises bearing Door No.IX/154, Ward No.31, Madanapalli.

Immediately after commencing the business, respondent No.3 submitted an application to respondent No.1 for shifting the shop from Ward No.15 to Ward No.31 by stating that he was being compelled to vacate the premises because the land owner wanted to demolish the building and construct a new building. On coming to know of the application made by respondent No.3, the appellant submitted representation dated 17.7.2006 to respondent No.1 with the request that the shop of respondent No.3 may not be shifted to Ward No.31. Assistant Excise Superintendent, Chittoor, who was asked to enquire into the matter, submitted report with the recommendation that the application of respondent No.3 may be accepted. Thereupon, Deputy Commissioner of Prohibition and Excise, Chittoor, vide his letter dated 22.7.2006 submitted proposal to respondent No.1 for grant of permission to respondent No.3 to shift the licensed premises from Door No.IX/154, Ward No.15 to Door No.4-8-2-E1, Ward No.31, Krishna Nagar, Madanapalli. The latter accepted the proposal and issued order dated 10-8-2006, whereby he permitted respondent No.3 to shift the shop from the existing premises in Ward No.15 to the new premises in Ward No.31.

The appellant challenged the aforementioned order in Writ Petition No.17124 of 2006. He pleaded that the solitary reason put-forward by respondent No.3 for grant of permission to shift the

shop from Ward No.15 to Ward No.31 i.e. the proposed demolition of shop by the owner was non-existent and concocted and that respondent No.1 mechanically accepted the recommendations made by the Deputy Commissioner without independently and objectively considering whether there was any valid reason for shifting the shop of respondent No.3 from Ward No.15 to Ward No.31. The appellant also challenged the validity of Rule 29(3) of the Rules by contending that the same was ultra vires the provisions of the Andhra Pradesh Excise Act, 1968.

The learned Single Judge referred to the order passed in Writ Petition No.26957 of 2005 and negatived the appellant's challenge to Rule 29(3) of the Rules by recording the following observations:

> "The validity of Rule 29(3) of the Rules, as amended by G.O.Ms.No.1878 dated 8-11-2005 was questioned in W.P.No.26957 of 2005 contending that the same was ultra vires the legislative competence of the State under Section 72 of the A.P. Excise Act, 1968 (for short "the Act"). It was contended that the impugned Rule conferred unguided and unfettered power on the Commissioner to permit shifting of retail shop, which would amount to taking away the vested right of existing retail licensees. The Court having considered all the relevant aspects, though declined to hold that Rule 29(3) was ultra vires the legislative power under Section 72 of the Act, or unconstitutional, and that any unguided or unfettered powers were conferred on the Commissioner of Prohibition and Excise, held that on a combined reading of Rules 3, 4 and 5 of the Rules, lease of right to sell liquor by shop by way of public auction can be granted only in respect of shops fixed by the Commissioner of Prohibition and Excise in the particular area/locality identified by him in the notification and, therefore, the power conferred under sub-rule (3) of Rule

29 cannot be interpreted as empowering the Commissioner to permit shifting of the shop to a locality/area other than that was identified by the Commissioner in the notification. It was also held as under:

> "The deletion of the words '**within the same area/locality where it was originally established**' by itself did not render the power conferred on the Commissioner or Prohibition & Excise, arbitrary or unguided. However, in a given case if the authority is found to have exercised his discretion contrary to the scheme enunciated under Rules 3, 4 and 5 of the Rules, such decision can be struck down as arbitrary and illegal."

It is to be noted that subsequent to the said order in W.P.No.26957 of 2005, sub-rule (3) of Rule 29 of the Rules was amended by G.O.Ms.No.598, dated 26-5-2006 inserting the proviso, which was extracted above. As already noted, the proviso empowers the Commissioner to permit shifting of the licensed premises within the same Mandal or Municipality or Municipal Corporation notwithstanding the notified area of the licensed premises. The said amendment was brought in on 26-5-2006 itself, whereas the notification inviting tenders for auction of grant of lease by shop under Rule 5 of the Rules was issued subsequently on 26-5-2006. Hence, all the participants in the auction are bound by the amended rule and having participated in the auction without raising any objection, it is not open to them now to contend that the shifting of the shop from one Ward to another Ward would affect their business……."

The learned Single Judge then noted that shifting of the licensed premises of respondent No.3 did not affect the total number of notified shops in Madanapalli Municipality and,

therefore, the permission granted by respondent No.1 does not call for interference by the Court.

We have heard learned counsel for the parties and perused the record. Before proceeding further, it is apposite to mention that on 5-2-2007, we had, after hearing learned counsel for the parties, observed that the appellant's challenge to the validity of Rule 29(3) of the Rules is untenable. However, the case was adjourned so as to enable respondent No.3 to file additional affidavit.

Sri Pratap Narayan Sanghi reiterated the appellant's challenge to order dated 10.8.2006 and argued that respondent No.1 committed a serious error by according permission to respondent No.3 for shifting the shop from Ward No.15 to Ward No.31. He pointed out that the cause projected by respondent No.3 for seeking permission to shift the shop from Ward No.15 to Ward No.31 was non-existent and false because the owner of the premises never wanted to demolish the existing building and construct a new building. Learned Government Pleader and Sri M.Pramod supported the order under challenge and argued that the appellant who is a competitor in business does not have the locus to challenge the shifting of the shop from Ward No.15 to Ward No.31.

We have considered the respective submissions.

Rule 29(3) of the Rules, as amended by notification dated 26-5-2006, reads as under:

> "29(3) Shifting of the licensed premises may be permitted for valid reasons within the notified area and subject to conditions as may be specified by the Commissioner

subject to payment of one per cent of the lese amount or Rs.25,000/- whichever is higher;

Provided that the Commissioner may consider and permit for valid reasons shifting of the licensed premises, notwithstanding the notified area of the licensed premises, within the same Mandal or Municipality or Municipal Corporation, without affecting the total number of notified shops in the said Mandal or Municipality or Municipal Corporation subject to condition as specified by the Commissioner and subject to payment of one percent of lease amount or Rs.25,000/- whichever is higher".

A reading of the above reproduced rule shows that shifting of the licensed premises can be permitted for valid reason within the notified area and subject to conditions to be specified by the Commissioner. The expression 'valid reason' has not been defined in Andhra Pradesh Excise Act, 1968 or the Rules, but the setup in which the said expression has been used in sub-rule 3 of Rule 29 makes it clear that the proposed shifting of the licensed premises must be for good and sufficient reasons having bearing on public interest. In a given case, the licensee may not be able to commence and carry on the business on account of the opposition by the people of the area or on account of non-availability of the premises or similar reasons. A false or fabricated or non-existing reason does not fall within the ambit of the expression 'valid reason.'

We may now advert to the facts of the case. The sole ground on which respondent No.3, who is proprietor of M/s. R.R. Wines, Madanapalli applied for transfer of the licensed shop from Ward No.15 to Ward No.31 was that the land owner of

the premises where he was running the shop wanted to demolish the building and construct a new building and for that purpose he was called upon to vacate the same. Assistant Commissioner of Prohibition, who is said to have inspected the site, recommended for shifting of the shop of respondent No.3 by believing the story put-forward by respondent No.3 that the landlord wanted to demolish the building and construct a new one. On his part, respondent No.1 did not make any further enquiry and accepted the recommendations made by the Deputy Commissioner without directing his attention to the language of Rule 29(3), which envisages shifting of the licensed premises for valid reasons. The material brought on the record of the writ petition and this appeal clearly shows that the land owner never intended to demolish the shop and construct a new building and, as a matter of fact, within a few weeks of respondent No.3 vacating the shop, the land owner leased out the same to another person namely K. Ganesh for running a hotel. It is beyond comprehension of any normal human being as to how a building which was vacated in the month of August, 2006 could be demolished, reconstructed and then leased out for running a new business. In the course of hearing, learned counsel for respondent No.3 candidly admitted that the premises in which his client was running the shop had not been demolished. He also admitted that after renovating the shop, the land owner leased out the same to K. Ganesh, son of Kannaiah for running a hotel. It is, thus, evident that respondent No.3 had concocted the story of the proposed demolition of the shop and succeeded in misleading respondent No.1 in according permission to shift the

shop from Ward No.15 to Ward No.31.

The learned Single Judge negatived the appellant's challenge without examining the factual matrix of the case in a correct perspective and without appreciating the fact that there did not exist any reason, what to say a valid reason, for shifting of the shop from ward No.15 to ward No.31. The false story like the one concocted by respondent No.3 certainly does not fall within the ambit of Rule 29(3). Therefore, the order under challenge is liable to be upset.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, writ petition filed by the appellant is allowed and order dated 10.08.2006 passed by the respondent No.1 is quashed. Respondent No.3 is restrained from running the licensed shop in Ward No.31. However, liberty is given to him to make an application to the competent authority for grant of permission to again start his business operations in a suitable place in Ward No.15.

G.S.SINGHVI, CJ

12th February, 2007

C.V.NAGARJUNA REDDY, J

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